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FCC 96-222

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**Before the
 FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554**

In the Matters of)	
)	
Computer III Remand Proceedings:)	CC Docket No. 90-623
Bell Operating Company Safeguards and)	
Tier 1 Local Exchange Company Safeguards)	
)	
and)	
)	
Rules Governing Telephone Companies')	CC Docket Nos. 90-623
Use of Customer Proprietary)	92-256 ✓
Network Information)	
)	

ORDER**Adopted:** May 16, 1996**Released:** May 17, 1996

By the Commission:

1. In this Order, we dispose of several pending matters in CC Docket No. 90-623 that concern our customer proprietary network information (CPNI) rules. These matters have become moot because of the passage of the Telecommunications Act of 1996¹ and our commencement of a new proceeding to address the obligations of telecommunications carriers with respect to CPNI in light of the new statute.

2. There are three pending petitions for reconsideration of the BOC Safeguards Order.² That order, among other things, revised the CPNI provisions the Commission had

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996) codified at 47 U.S.C. §§ et seq. (the 1996 Act).

² Petition for Reconsideration of Cox Enterprises, Inc., CC Docket No. 90-623 (filed Mar. 5, 1992) (Cox Reconsideration Petition); Alarm Industry Communications Committee Petition for Partial Reconsideration, CC Docket No. 90-623 (filed Mar. 6, 1992) (AICC Reconsideration Petition); Petition for Reconsideration of the Association of Telemessaging Services International, Inc., CC Docket No. 90-623 (filed Mar. 6, 1992)

adopted in the Computer II³ and Computer III⁴ proceedings for the provision of enhanced services and customer premises equipment (CPE) by the Bell Operating Companies (BOCs).⁵ The Cox Reconsideration Petition argued that enhanced services providers (ESPs) should not be required to obtain prior written customer authorization in order to obtain access to CPNI and that the Commission lacked jurisdiction over CPNI derived from state and local use of the telecommunications network. The AICC Reconsideration Petition argued that the Commission should revoke the "20-line rule" imposed by the BOC Safeguards Order,⁶ and require the BOCs to obtain prior authorization for access to the CPNI of all local exchange customers. The ATSI Reconsideration Petition argued that the BOC Safeguards Order should be modified in three respects: 1) the BOCs should be prohibited from joint marketing of basic and enhanced services; 2) the BOCs should be required to obtain prior customer authorization to obtain access to the CPNI of all customers; and 3) the BOCs should be required to treat customers that restrict access to their CPNI in a non-discriminatory fashion.

3. On March 10, 1994, the Common Carrier Bureau (Bureau) initiated by Public Notice an inquiry into related CPNI issues. The Notice invited comments on whether the

(ATSI Reconsideration Petition).

³ Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II), 77 FCC 2d 384 (1980) (Final Order), recon., 84 FCC 2d 50 (1980) (Reconsideration Order), further recon., 88 FCC 2d 512 (1981) (Further Reconsideration Order), affirmed sub nom. Computer and Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

⁴ Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III), CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (Phase I Order), recon., 2 FCC Rcd 3035 (1987) (Phase I Reconsideration Order), further recon., 3 FCC Rcd 1135 (1988) (Phase I Further Reconsideration Order), second further recon., 4 FCC Rcd 5927 (1989) (Phase I Second Further Reconsideration Order); Phase I Order and Phase I Reconsideration Order vacated California v. FCC, 905 F.2d 1217 (9th Cir. 1990) (California I); Phase II, 2 FCC Rcd 3072 (1987) (Computer III Phase II Order), recon., 3 FCC Rcd 1150 (1988) (Phase II Reconsideration Order), further recon., 4 FCC Rcd 5927 (1989) (Phase II Further Reconsideration Order); Phase II Order vacated, California I, 905 F.2d 1217 (9th Cir. 1990); Computer III Remand Proceeding, 5 FCC Rcd 7719 (1990) (ONA Remand Order), recon., 7 FCC Rcd 909 (1992), pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993) (California II); Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571 (1991) (BOC Safeguards Order), pets. for recon. pending; BOC Safeguards Order vacated in part and remanded, California v. FCC, 39 F.3d 919 (9th Cir. 1994) (California III), cert. denied, 115 S. Ct. 1427 (1995).

⁵ BOC Safeguards Order, 6 FCC Rcd at 7613, ¶ 89. Certain other portions of the BOC Safeguards Order were remanded to the Commission by the Ninth Circuit Court of Appeals in the California III decision, and are the subject of the Commission's Computer III Further Remand Proceedings. See 10 FCC Rcd 8360 (1995). The Ninth Circuit specifically upheld the CPNI provisions of the BOC Safeguards Order, however. California III, 39 F.3d at 930-31.

⁶ BOC personnel are required to obtain written prior authorization from customers that subscribe to more than 20 lines in order to obtain access to their CPNI for the purpose of marketing enhanced services to them. See BOC Safeguards Order, 6 FCC Rcd at 7609, ¶ 84.

Commission's existing CPNI safeguards continued to strike the appropriate balance among customers' privacy interests, competitive equity, and efficiency, in light of the increasing alliances, acquisitions, and mergers by and between telephone and non-telephone companies.⁷

4. The 1996 Act was enacted on February 8, 1996. Section 702 of the 1996 Act added a new, self-executing Section 222 to the Communications Act of 1934, as amended,⁸ which sets forth, among other things, restrictions on the use of CPNI obtained by telecommunications carriers in providing telecommunications service to customers. Section 222 provides, among other things, that all telecommunications carriers must obtain prior customer approval before obtaining access to CPNI for any purpose other than provision of the telecommunications service from which the CPNI is derived, or necessary related services. Further, Section 222 requires telecommunications carriers to disclose CPNI, upon affirmative written request by the customer, to any person designated by the customer.

5. In response to requests from several telecommunications carriers and carrier associations, the Commission is initiating a rulemaking to clarify the CPNI requirements imposed on all telecommunications carriers by the statute.⁹ In that Notice, we seek comment, among other things, on whether we should continue to apply to the BOCs existing CPNI requirements that are not inconsistent with the provisions of the 1996 Act, and what, if any, modifications to our existing CPNI rules should be adopted, in light of the statute.

6. We believe that this rulemaking is the appropriate forum in which to consider issues concerning use and protection of CPNI, in light of the statutory CPNI requirements imposed on all telecommunications carriers by the 1996 Act. In addition, because the comment cycle for the March 1994 Public Notice closed well before passage of the 1996 Act, we conclude that the record would be of limited value because it does not address issues raised by the new statute.

7. Because the statutory CPNI provisions supersede the aspects of the CPNI provisions established in the BOC Safeguards Order that were challenged on reconsideration, we hereby dismiss as moot the Cox and AICC Reconsideration Petitions. We note that the ATSI Reconsideration Petition raised an issue going beyond the CPNI requirements adopted in the BOC Safeguards Order. In particular, ATSI argued the Commission should have adopted a prohibition on joint marketing of basic and enhanced services by the BOCs. Because that issue is neither addressed in, nor superseded by, new Section 222 of the 1996

⁷ Pleading Cycle Established for Comments on Rules Governing Telephone Companies' Use of Customer Proprietary Network Information, Public Notice, CC Docket Nos. 90-623 and 92-256, FCC 94-063 (rel. Mar. 10, 1994).

⁸ 47 U.S.C. § 151 *et seq.*

⁹ Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Notice of Proposed Rulemaking, CC Docket No. 96-115, FCC 96-221, (rel. May 16, 1996).

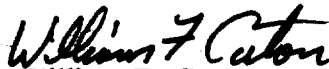
Act, that issue remains pending before the Commission. We dismiss the remainder of the ATSI Reconsideration Petition as moot. We also terminate the inquiry that we initiated on March 10, 1994.

8. Accordingly, IT IS ORDERED that the above-referenced Cox and AICC Reconsideration Petitions in CC Docket No. 90-623 ARE DISMISSED AS MOOT.

9. IT IS FURTHER ORDERED that the above-referenced ATSI Reconsideration Petition in CC Docket No. 90-623 IS PARTIALLY DISMISSED AS MOOT, to the extent indicated within this order.

10. IT IS FURTHER ORDERED that the inquiry initiated by Public Notice on March 10, 1994 in CC Docket Nos. 90-623 and 92-256 IS HEREBY TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary